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October 1, 2002

The Hon. Jeffrey W. Runge, M.D.  
Administrator  
National Highway Traffic  
Safety Administration  
U.S. Department of Transportation  
400 Seventh Street, S.W.  
Washington, D.C. 20590

Re: Supplemental Notice of Proposed Rulemaking – Disposition of  
Recalled Tires; Docket No. NHTSA-2001-10856; Notice 2; 67  
*Federal Register* 48852-48855 (July 26, 2002).

Dear Dr. Runge:

On behalf of its tire manufacturer members, the Rubber Manufacturers Association (“RMA”)<sup>1</sup> appreciates the opportunity to provide supplemental comments to the above-captioned supplemental notice of proposed rulemaking (“SNPRM”) regarding the disposition of defective or non-compliant tires that are subject to recall. Because the SNPRM is limited to issues presented by RMA’s position in this rulemaking, we believe it is appropriate to permit RMA to respond to comments filed by other parties that may present a contrary position. In these supplemental comments, we address comments filed by three organizations: Advocates for Highway and Auto Safety, Tire Industry Association, and National Automobile Dealers Association.

**I. Comments filed by Advocates for Highway and Auto Safety (“AHAS”)**

**A. AHAS Comments Go Beyond Scope of *TREAD Act***

RMA has several concerns about the comments filed by AHAS. In the NPRM, NHTSA proposed to require a tire manufacturer’s recall plan to include instructions to manufacturer-owned and other manufacturer-controlled outlets “to perform the incapacitation of each recalled tire by the close of business on the day on which [the] recalled tire has been removed from the vehicle.” 66 Fed. Reg. at 65172 (col. 3). AHAS

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<sup>1</sup> The Rubber Manufacturers Association (“RMA”) is the leading national trade association representing the interests of tire and rubber manufacturers in the United States. RMA’s membership includes all of the country’s major tire manufacturers: Bridgestone/Firestone Americas Holding, L.L.C., Continental Tire N.A., Inc., Cooper Tire & Rubber Company, The Goodyear Tire & Rubber Company, Michelin North America, Inc., Pirelli Tire North America, and Yokohama Tire Corporation.

urges NHTSA to extend the application of this provision “to all tire replacement outlets and facilities, not just those reasonably within control of the manufacturer.”

While Section 7 of the TREAD Act expressly limits manufacturer responsibility to tire replacement facilities “reasonably within the control of the manufacturer,” AHAS is of the view that NHTSA also has authority under the National Highway and Motor Vehicle Safety Act “to regulate the disposition of defective equipment, including tires.” Thus, AHAS seems to be arguing, even though the TREAD Act expressly limits manufacturer responsibility, NHTSA has inherent authority under the Safety Act to require manufacturers to do more. In addition, AHAS suggests that the agency could interpret “control of the manufacturer” to include “tires at authorized dealerships and outlets as well as other facilities which the manufacturer neither owns nor operates but with which the manufacturer has a contractual relationship.”

In short, AHAS is asking NHTSA to re-write the TREAD Act through this rulemaking. RMA recommends that limit the applicability of this rule to tire replacement facilities that are “reasonably within the control of the manufacturer” as outlined in the TREAD Act. While it is legitimate to have general concern for the population of recalled tires not in control of the tire manufacturer, NHTSA must recognize that this regulation specifically contemplates the responsibilities of tire manufacturers, which were expressly limited by Congress in the TREAD Act. Tire manufacturers simply cannot be held responsible for actions of individuals or companies outside of their control.

***B. AHAS Misunderstands RMA’s Proposed Approach***

While AHAS states that it “finds no merit in the pragmatic arguments raised by [RMA],” it would appear that AHAS fundamentally misunderstands RMA’s position. According to AHAS, “RMA urges NHTSA to adopt the view that if a manufacturer requires all recalled tires to be returned to the manufacturer, the manufacturer would not be required to file a plan addressing how to prevent the resale of defective tires or the disposal of those tires . . . .” On the contrary, RMA advocates that for every recall involving more than 10,000 tires, a manufacturer’s remedy plan submitted to NHTSA must explain “how the manufacturer will prevent, to the extent reasonably within its control, the recalled tires from being resold for installation on a motor vehicle.” RMA Comments (8/26/02) at p. 3. For recalls involving fewer than 10,000 tires, RMA believes that the current regulatory requirements contained in 49 CFR Part 573 satisfy Section 7 of the TREAD Act. The RMA approach is discussed fully in its August 26, 2002 comments. Only if a manufacturer chooses to allow tire dealers to deal with the recalled tires themselves would the manufacturer file an ‘exception plan’ regarding the recall.

AHAS also mentions exception plans in its comments and states that “only if a manufacturer chooses to allow tire dealers to deal with the recalled tires themselves would the manufacturer file an ‘exception plan’ regarding the recall.” AHAS Comments at p. 2. As described in the previous paragraph, under the RMA approach, *recall plans* would be required of every tire manufacturer conducting a recall of more than 10,000 tires. *Exception plans* would only be submitted to NHTSA in cases where tire manufacturers choose to have tire dealers manage the recalled tires directly. Instead of

looking to eliminate requirements of the TREAD Act, as AHAS would suggest, the RMA approach merely looks to enhance flexibility and reduce regulatory burdens on tire manufacturers while fulfilling the intent and letter of the TREAD Act.

***C. AHAS Recommendation to Destroy Tires Within a Day Does Not Provide Additional Safeguards***

AHAS states that recalled tires should be immediately rendered unsuitable for use in order to prevent their resale and reuse. First of all, it is important to remember that the TREAD Act already explicitly prohibits the sale or reuse of recalled tires. However, it is possible that someone will resell or reuse recalled tires, despite the fact that such actions are illegal. Likewise, even if NHTSA mandated that recalled tires be disabled in a certain time schedule, someone may choose not to disable recalled tires and may choose to resell or reuse them. These actions would still be illegal. However, requiring manufacturers to instruct tire retail outlets to destroy or disable recalled tires by the end of the day only adds additional regulatory requirements without adding any additional assurance of compliance; in short, it does not enhance public safety.

The RMA approach enhances public safety and is consistent with the TREAD Act for several reasons. First, by allowing tire manufacturers to collect recalled tires in a centralized system, tire manufacturers and NHTSA will be better able to assess the effectiveness of the recall. This system will allow for a systematic accounting of all collected recalled tires and enable benchmarking against the total recall population to assess the progress of the recall. Second, the RMA approach allows a tire manufacturer to link reimbursement for recalled tire replacements to the return of recalled tires. Since tire dealers and other tire retail outlets will want to be reimbursed for the replacement tires that are installed on customer vehicles, this will act as an incentive for recalled tires to be properly returned to the tire manufacturer.

Third, allowing for recalled tires to be returned to the tire manufacturer intact will allow that manufacturer to select a population of recalled tires for testing. Such testing would enable the tire manufacturer to analyze the performance of the recalled tires and potentially implement tire design changes that would decrease the likelihood of future tire recalls, which would ultimately protect the driving public and promote public safety. Fourth, by allowing the recalled tires to be returned to tire manufacturers, the system would allow tire manufacturers to determine if all the collected tires are actually in the recall population and return to service those not in the recall population. This will minimize the number of tires scrapped in the recall and meet the environmental goal in the TREAD Act of minimizing the number of tires being disposed.

***D. AHAS Ignores Environmental Aspects of TREAD Act Requirements***

In its comments, AHAS urges NHTSA to “strike a balance firmly on the side of ensuring public safety” by requiring the destruction of all recalled tires within one business day. However, the TREAD Act specifically mandates a different balance – that of protecting the environment by preventing the unnecessary disposal of recalled tires in landfills while preventing, to the extent reasonably within the tire manufacturer’s control,

recalled tires from being resold for installation on a motor vehicle. As RMA has stated previously, allowing tire manufacturers to collect recalled tires in an organized and systematic manner will provide significantly greater assurance that recalled tires are disposed of in an environmentally sound manner than if potentially thousands of tire retailers are charged with independently contracting for tire disposal services. This system would not only be consistent with Section 7 of the TREAD Act, but it would provide greater consistency with it than NHTSA's original proposal.

***E. Tire Manufacturers Possess the Expertise Necessary to Inspect Recalled Tires***

AHAS states that it is "perplexed over the assertion that tire outlets and distributors do not have the necessary expertise to inspect, sort and destroy tires containing defects." RMA maintains its position that tire manufacturers are uniquely situated to inspect tires collected pursuant to a tire recall. Tire manufacturers have highly trained tire engineers whose expertise far surpasses that of tire dealers, which will ensure that only tires that are actually in the recall population are destroyed. It is important here to note that even the tire dealers, through their trade association, Tire Industry Association (TIA), supports the RMA approach of tire manufacturers collecting recalled tires. This practice is well established and has proven to be an appropriate method of managing recalled tires. In addition, it allows recalled tires to be managed on a consistent basis throughout the recall population, instead of in potentially thousands of variations by tire dealers nationwide.

The RMA approach provides the appropriate balance among the various goals including public safety and environmental protection, and while providing flexibility to tire manufacturers to tailor tire recall plans to the specific needs and circumstances of individual tire recalls.

**II. Tire Industry Association (TIA)**

While TIA states that it "fully supports the regulatory language" proposed by RMA, it also makes some additional recommendations. First, TIA recommends that the final rules should "include a requirement that manufacturers seek the highest and best recycling/reuse opportunities for recalled tires when its is practical and safe to do so." As it has previously stated, RMA supports all market applications for scrap tires that are economically and environmentally sound. Of those acceptable markets, it is inappropriate to place subjective value judgments that would favor one market application over another. RMA fully supports the requirement in Section 7 of the TREAD Act that tire manufacturers "limit, to the extent reasonably within the control of the manufacturer, the disposal of replaced tires in landfills, particularly through shredding, crumbling, recycling, recovery and other alternative beneficial non-vehicular uses." Beyond this requirement, it is inappropriate for NHTSA to value certain market applications for scrap tires over others.

Second, while TIA agrees with RMA that all recalled tires should be returned to the manufacturer, TIA wants the final rules to "prevent large stockpiles of tires during a

recall by ensuring the timely shipping of tires to the manufacturers.” Thus, TIA urges NHTSA to include a provision in the final rules requiring tire manufacturers “to accept a shipment every 30 days, or once the minimum weight is reached, whichever comes first.” RMA understands the concern expressed by TIA. RMA recommends that tire manufacturers include provisions in their recall plans that describe the frequency of tire shipments, instead of the final rule specifying a default frequency. This will allow a tire manufacturer to set shipment frequency at a level appropriate to meet the demands of a specific recall, while addressing the legitimate concern of tire dealers that recalled tires not be stockpiled at dealer locations.

Third, in situations where a tire manufacturer does not specify that recalled tires should be returned to the manufacturer, TIA states that “each individual tire dealer will follow current practices to comply with its local and state laws regarding disposal and other recycling options.” This is consistent with the disposal practice for tires scrapped through normal use. Tire dealers have experience and systems in place to manage scrap tires generated at their dealerships, which would typically be able to absorb additional scrap tires collected through a recall. RMA supports the TIA position that “NHTSA should allow individual dealers and distributors to make arrangements with their own disposal companies and/or take advantage of recycling opportunities in their regions” in situations where recalled tires are not being collected by the tire manufacturer, but instead disabled and managed by individual tire dealers.

### **III. National Automobile Dealers Association (NADA)**

NADA “generally supports” the RMA position, but offers the some additional suggestions. First, NADA states that when a manufacturer’s recall plan does not require the tires to be returned to the manufacturer (“take-back”), “manufacturer plans could include instructions for alteration within 24 hours after receipt (not by the end of the business day), assuming such alteration wouldn’t undermine a manufacturer-arranged, third-party, beneficial disposition program.” RMA supports the concept of this suggestion and recommends that manufacturer instructions in this regard be tailored to the circumstances of individual recalls, consistent with the NADA position.

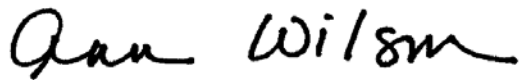
Referencing the provisions of the TREAD Act that prohibit the resale of any used recalled tire, NADA states that, “perhaps manufacturer plans should include instructions referencing these prohibitions.” NADA adds, “Of course, to the extent retailers are fairly compensated for properly handling recalled used tires, there will be no economic incentive for them to do otherwise.” This recommendation is consistent with the RMA approach, in that RMA believes that any remedy plan should “address[ ], to the extent reasonably within the control of the manufacturer, replaced tires from being resold for installation on a motor vehicle....” However, it should be noted that under the TREAD Act, tire manufacturers are not under any affirmative obligation to notify tire or automobile dealers about their legal responsibilities with regard to reselling recalled tires. Yet, tire manufacturers could reference these TREAD Act requirements in instructions provided to tire and automobile dealers. NADA did make a salient observation with regard to this subject, though, by stating that “of course, to the extent retailers are fairly compensated for properly handling recalled used tires, there will be no economic

incentive for them to do otherwise.” This statement underscores the logic behind the RMA approach – if economic reimbursement for recalled tires is tied to the return of those tires, the incentive for mishandling recalled tires disappears.

#### **IV. Conclusion**

RMA reiterates its appreciation for the opportunity to respond to the comments of other stakeholders on the RMA approach to the managing disposition of recalled tires. If you have any questions about these comments or require any clarifications about the RMA approach, please contact me at (202) 682-4837. RMA would be happy to discuss these issues with NHTSA staff via teleconference or in person if additional information is needed.

Respectfully submitted,

A handwritten signature in black ink that reads "Ann Wilson". The signature is written in a cursive, flowing style.

Ann Wilson  
Senior Vice President  
Government Affairs